

REFERENCE TITLE: occupational safety; employee death; penalties

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Senate
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SB 1289

Introduced by
Senators McCune Davis, Aboud, Garcia, Hale: Aguirre, Arzberger, Miranda,
Rios, Soltero

AN ACT

AMENDING SECTIONS 23-418.01 AND 23-901, ARIZONA REVISED STATUTES; RELATING TO
WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 23-418.01, Arizona Revised Statutes, is amended to read:

23-418.01. Additional penalty for wilful or repeated violation causing employee permanent disability or death covered by workers' compensation: payment to employee; enforcement

A. An additional penalty of twenty-five thousand dollars shall be assessed by the commission against an employer who is assessed a penalty under section 23-418, subsection A ~~OR B,~~ for each employee injury resulting in permanent disability or death if the commission finds all of the following:

1. The employee injury resulting in permanent disability or death was caused by the violation for which the employer is assessed a penalty under section 23-418, subsection A ~~OR B.~~

2. Compensation benefits are paid ~~UNDER CHAPTER 6 OF THIS TITLE EITHER:~~

(a) To the injured employee. ~~, or~~

(b) In the event of death, ~~his~~ ~~TO THE EMPLOYEE'S~~ dependents. ~~, under chapter 6 of this title~~ ~~THE REQUIREMENT OF THIS SUBDIVISION IS SATISFIED IF AN EMPLOYEE DID NOT HAVE ANY DEPENDENTS FOR WHICH COMPENSATION BENEFITS WOULD HAVE OTHERWISE BEEN PAID UNDER CHAPTER 6 OF THIS TITLE.~~

3. The violation for which the employer is assessed a penalty under section 23-418, subsection A ~~OR B,~~ did not result from the injured or deceased employee's disobedience to specific instructions given to the employee regarding the job condition causing ~~his~~ ~~THE EMPLOYEE'S~~ injury or death or relating to the safety standards applicable to that job condition.

B. Each additional penalty assessed under subsection A of this section shall be paid to the injured employee, or in the event of death, ~~his~~ ~~THE EMPLOYEE'S~~ dependents ~~OR THE EMPLOYEE'S ESTATE~~, in addition to the benefits paid under chapter 6 of this title.

C. If an employer requests a hearing on an additional penalty assessed under this section, the commission may either hear the issues raised pursuant to the hearing procedures under this article or may refer the matter to an administrative law judge assigned to hear matters relating to the workers' compensation claim under chapter 6 of this title. If the hearing procedures are under this article, the procedures for further review or appeal shall be in accordance with this article. If the hearing procedures are under chapter 6 of this title, the procedures for further review or appeal shall be in accordance with chapter 6, article 3 of this title. An additional penalty under this section that becomes final shall operate as a judgment against the employer and may be enforced by either the commission or the injured employee, or in the case of death, ~~his~~ ~~THE EMPLOYEE'S~~ dependents ~~OR THE EMPLOYEE'S ESTATE~~, and all lawful remedies for the collection of judgments, including provisional remedies, shall be available. This section does not

1 create any right of action or recovery against the employer's workers'
2 compensation insurance carrier, and the additional penalty provided by this
3 section is not a compensation benefit under chapter 6 of this title and is
4 not subject to the payment of attorney fees.

5 Sec. 2. Section 23-901, Arizona Revised Statutes, is amended to read:

6 23-901. Definitions

7 In this chapter, unless the context otherwise requires:

8 1. "Award" means the finding or decision of an administrative law
9 judge or the commission as to the amount of compensation or benefit due an
10 injured employee or the dependents of a deceased employee.

11 2. "Client" means an individual, association, company, firm,
12 partnership, corporation or any other legally recognized entity that is
13 subject to ~~the provisions of~~ this chapter and that enters into a professional
14 employer agreement with a professional employer organization.

15 3. "Co-employee" means every person employed by an injured employee's
16 employer.

17 4. "Commission" means the industrial commission of Arizona.

18 5. "Compensation" means the compensation and benefits provided by this
19 chapter.

20 6. "Employee", "workman", "worker" and "operative" means:

21 (a) Every person in the service of the state or a county, city, town,
22 municipal corporation or school district, including regular members of
23 lawfully constituted police and fire departments of cities and towns, whether
24 by election, appointment or contract of hire.

25 (b) Every person in the service of any employer subject to this
26 chapter, including aliens and minors legally or illegally permitted to work
27 for hire, but not including a person whose employment is both:

28 (i) Casual.

29 (ii) Not in the usual course of the trade, business or occupation of
30 the employer.

31 (c) Lessees of mining property and their employees and contractors
32 engaged in the performance of work which is a part of the business conducted
33 by the lessor and over which the lessor retains supervision or control are
34 within the meaning of this paragraph employees of the lessor, and are deemed
35 to be drawing wages as are usually paid employees for similar work. The
36 lessor may deduct from the proceeds of ores mined by the lessees the premium
37 required by this chapter to be paid for such employees.

38 (d) Regular members of volunteer fire departments organized pursuant
39 to title 48, chapter 5, article 1, regular firemen of any volunteer fire
40 department, including private fire protection service organizations,
41 organized pursuant to title 10, chapters 24 through 40, volunteer firemen
42 serving as members of a fire department of any incorporated city or town or
43 an unincorporated area without pay or without full pay and on a part-time
44 basis, and voluntary policemen and volunteer firemen serving in any
45 incorporated city, town or unincorporated area without pay or without full

1 pay and on a part-time basis, are deemed to be employees, but for the
2 purposes of this chapter, the basis for computing wages for premium payments
3 and compensation benefits for regular members of volunteer fire departments
4 organized pursuant to title 48, chapter 5, article 1, or organized pursuant
5 to title 10, chapters 24 through 40, regular members of any private fire
6 protection service organization, volunteer firemen and volunteer policemen of
7 these departments or organizations shall be the salary equal to the beginning
8 salary of the same rank or grade in the full-time service with the city,
9 town, volunteer fire department or private fire protection service
10 organization, provided if there is no full-time equivalent then the salary
11 equivalent shall be as determined by resolution of the governing body of the
12 city, town or volunteer fire department or corporation.

13 (e) Members of the department of public safety reserve, organized
14 pursuant to section 41-1715, are deemed to be employees. For the purposes of
15 this chapter, the basis for computing wages for premium payments and
16 compensation benefits for a member of the department of public safety reserve
17 who is a peace officer shall be the salary received by officers of the
18 department of public safety for their first month of regular duty as an
19 officer. For members of the department of public safety reserve who are not
20 peace officers, the basis for computing premiums and compensation benefits is
21 four hundred dollars a month.

22 (f) Any person placed in on-the-job evaluation or in on-the-job
23 training under the department of economic security's temporary assistance for
24 needy families program or vocational rehabilitation program shall be deemed
25 to be an employee of the department for the purpose of coverage under the
26 state workers' compensation laws only. The basis for computing premium
27 payments and compensation benefits shall be two hundred dollars per month.
28 Any person receiving vocational rehabilitation services under the department
29 of economic security's vocational rehabilitation program whose major
30 evaluation or training activity is academic, whether as an enrolled attending
31 student or by correspondence, or who is confined to a hospital or penal
32 institution, shall not be deemed to be an employee of the department for any
33 purpose. Any dividend which the department's vocational rehabilitation
34 program may be entitled to receive from the state compensation fund because
35 of a favorable loss experience for any policy period shall not revert to the
36 state general fund but shall be applied to the department's current premium
37 obligations for workers' compensation coverage for such program.

38 (g) Regular members of a volunteer sheriff's reserve, which may be
39 established by resolution of the county board of supervisors, to assist the
40 sheriff in the performance of the sheriff's official duties. A roster of the
41 current members shall monthly be certified to the clerk of the board of
42 supervisors by the sheriff and shall not exceed the maximum number authorized
43 by the board. Certified members of an authorized volunteer sheriff's reserve
44 shall be deemed to be employees of the county for the purpose of coverage
45 under the Arizona workers' compensation laws and occupational disease

1 disability laws and shall be entitled to receive the benefits of these laws
2 for any compensable injuries or disabling conditions which arise out of and
3 occur in the course of the performance of duties authorized and directed by
4 the sheriff. Compensation benefits and premium payments shall be based upon
5 the salary received by a regular full-time deputy sheriff of the county
6 involved for the first month of regular patrol duty as an officer for each
7 certified member of a volunteer sheriff's reserve. This subdivision shall
8 not be construed to provide compensation coverage for any member of a
9 sheriff's posse who is not a certified member of an authorized volunteer
10 sheriff's reserve except as a participant in a search and rescue mission or a
11 search and rescue training mission.

12 (h) A working member of a partnership may be deemed to be an employee
13 entitled to the benefits provided by this chapter upon written acceptance, by
14 endorsement, at the discretion of the insurance carrier for the partnership
15 of an application for coverage by the working partner. The basis for
16 computing premium payments and compensation benefits for the working partner
17 shall be an assumed average monthly wage of not less than six hundred dollars
18 nor more than the maximum wage provided in section 23-1041 and is subject to
19 the discretionary approval of the insurance carrier. Any compensation for
20 permanent partial or permanent total disability payable to the partner shall
21 be computed on the lesser of the assumed monthly wage agreed to by the
22 insurance carrier on the acceptance of the application for coverage or the
23 actual average monthly wage received by the partner at the time of injury.

24 (i) The sole proprietor of a business subject to this chapter may be
25 deemed to be an employee entitled to the benefits provided by this chapter on
26 written acceptance, by endorsement, at the discretion of the insurance
27 carrier of an application for coverage by the sole proprietor. The basis for
28 computing premium payments and compensation benefits for the sole proprietor
29 shall be an assumed average monthly wage of not less than six hundred dollars
30 nor more than the maximum wage provided by section 23-1041 and is subject to
31 the discretionary approval of the insurance carrier. Any compensation for
32 permanent partial or permanent total disability payable to the sole
33 proprietor shall be computed on the lesser of the assumed monthly wage agreed
34 to by the insurance carrier on the acceptance of the application for coverage
35 or the actual average monthly wage received by the sole proprietor at the
36 time of injury.

37 (j) A member of the Arizona national guard, Arizona state guard or
38 unorganized militia shall be deemed a state employee and entitled to coverage
39 under the Arizona workers' compensation law at all times while the member is
40 receiving the payment of the member's military salary from the state of
41 Arizona under competent military orders or upon order of the governor.
42 Compensation benefits shall be based upon the monthly military pay rate to
43 which the member is entitled at the time of injury, but not less than a
44 salary of four hundred dollars per month, nor more than the maximum provided

1 by the workers' compensation law. No Arizona compensation benefits shall
2 inure to a member compensable under federal law.

3 (k) Certified ambulance drivers and attendants who serve without pay
4 or without full pay on a part-time basis are deemed to be employees and
5 entitled to the benefits provided by this chapter and the basis for computing
6 wages for premium payments and compensation benefits for certified ambulance
7 personnel shall be four hundred dollars per month.

8 (l) Volunteer workers of a licensed health care institution may be
9 deemed to be employees and entitled to the benefits provided by this chapter
10 upon written acceptance by the insurance carrier of an application by the
11 health care institution for coverage of such volunteers. The basis for
12 computing wages for premium payments and compensation benefits for volunteers
13 shall be four hundred dollars per month.

14 (m) Personnel who participate in a search or rescue operation or a
15 search or rescue training operation that carries a mission identifier
16 assigned by the division of emergency management as provided in section
17 35-192.01 and who serve without compensation as volunteer state employees.
18 The basis for computation of wages for premium purposes and compensation
19 benefits is the total volunteer man-hours recorded by the division of
20 emergency management in a given quarter multiplied by the amount determined
21 by the appropriate risk management formula.

22 (n) Personnel who participate in emergency management training,
23 exercises or drills that are duly enrolled or registered with the division of
24 emergency management or any political subdivision as provided in section
25 26-314, subsection C and who serve without compensation as volunteer state
26 employees. The basis for computation of wages for premium purposes and
27 compensation benefits is the total volunteer man-hours recorded by the
28 division of emergency management or political subdivision during a given
29 training session, exercise or drill multiplied by the amount determined by
30 the appropriate risk management formula.

31 (o) Regular members of the Arizona game and fish department reserve,
32 organized pursuant to section 17-214. The basis for computing wages for
33 premium payments and compensation benefits for a member of the reserve is the
34 salary received by game rangers and wildlife managers of the Arizona game and
35 fish department for their first month of regular duty.

36 (p) Every person employed pursuant to a professional employer
37 agreement.

38 7. "General order" means an order applied generally throughout the
39 state to all persons under jurisdiction of the commission.

40 8. "Heart-related or perivascular injury, illness or death" means
41 myocardial infarction, coronary thrombosis or any other similar sudden,
42 violent or acute process involving the heart or perivascular system, or any
43 death resulting therefrom, and any weakness, disease or other condition of
44 the heart or perivascular system, or any death resulting therefrom.

1 9. "Insurance carrier" means the state compensation fund and every
2 insurance carrier duly authorized by the director of insurance to write
3 workers' compensation or occupational disease compensation insurance in the
4 state of Arizona.

5 10. "Interested party" means the employer, the employee, or if the
6 employee is deceased, **THE EMPLOYEE'S ESTATE**, the surviving spouse or
7 dependents, the commission, the insurance carrier or their representative.

8 11. "Mental injury, illness or condition" means any mental, emotional,
9 psychotic or neurotic injury, illness or condition.

10 12. "Order" means and includes any rule, direction, requirement,
11 standard, determination or decision other than an award or a directive by the
12 commission or an administrative law judge relative to any entitlement to
13 compensation benefits, or to the amount thereof, and any procedural ruling
14 relative to the processing or adjudicating of a compensation matter.

15 13. "Personal injury by accident arising out of and in the course of
16 employment" means any of the following:

17 (a) Personal injury by accident arising out of and in the course of
18 employment.

19 (b) An injury caused by the wilful act of a third person directed
20 against an employee because of the employee's employment, but does not
21 include a disease unless resulting from the injury.

22 (c) An occupational disease which is due to causes and conditions
23 characteristic of and peculiar to a particular trade, occupation, process or
24 employment, and not the ordinary diseases to which the general public is
25 exposed, and subject to section 23-901.01.

26 14. "Professional employer agreement" means a written contract between
27 a client and a professional employer organization:

28 (a) In which the professional employer organization expressly agrees
29 to co-employ all or a majority of the employees providing services for the
30 client. In determining whether the professional employer organization
31 employs all or a majority of the employees of a client, any person employed
32 pursuant to the terms of the professional employer agreement after the
33 initial placement of client employees on the payroll of the professional
34 employer organization shall be included.

35 (b) That is intended to be ongoing rather than temporary in nature.

36 (c) In which employer responsibilities for worksite employees,
37 including hiring, firing and disciplining, are expressly allocated between
38 the professional employer organization and the client in the agreement.

39 15. "Professional employer organization" means any person engaged in
40 the business of providing professional employer services. Professional
41 employer organization does not include a temporary help firm or an employment
42 agency.

1 16. "Professional employer services" means the service of entering into
2 co-employment relationships under this chapter to which all or a majority of
3 the employees providing services to a client or to a division or work unit of
4 a client are covered employees.

5 17. "Special order" means an order other than a general order.

6 18. "State compensation fund" includes the state compensation fund,
7 accident benefit fund and occupational disease compensation fund in existence
8 on January 2, 1969 and shall thereafter include all funds under the
9 jurisdiction of the board of directors of the state compensation fund which
10 have been derived from the assessment of premiums, interest, penalties and
11 investment earnings for the payment of all workers' compensation and
12 occupational disease compensation benefits.

13 19. "Weakness, disease or other condition of the heart or perivascular
14 system" means arteriosclerotic heart disease, cerebral vascular disease,
15 peripheral vascular disease, cardiovascular disease, angina pectoris,
16 congestive heart trouble, coronary insufficiency, ischemia and all other
17 similar weaknesses, diseases and conditions, and also previous episodes or
18 instances of myocardial infarction, coronary thrombosis or any similar
19 sudden, violent or acute process involving the heart or perivascular system.

20 20. "Workers' compensation" means workmen's compensation as used in
21 article XVIII, section 8, Constitution of Arizona.